

Global Electronic Commerce (GEC)
United States of America
February 19, 1998

Q: What does the U.S. seek with its proposal with regard to customs duties and electronic transmissions?

A: The U.S. proposal envisages that Members continue their current practices of not treating electronic transmissions of information as importations for purposes of customs duties. In other words, the proposal envisions a codification of the status quo.

Q: What is the significance of such a WTO “codification” that electronic transmissions, such as conveyances over the Internet, will continue to be treated not as importations subject to customs duties?

A: The U.S. proposal is intended to be an important first step in as the WTO undertakes work on electronic commerce. The WTO has made significant contributions to the development of the global electronic environment infrastructure through the Information Technology Agreement and the Agreement on Basic Telecommunications. This progressiveness by the WTO would continue with a codification of current practices that ensure continued treatment of electronic transmissions not as importations for customs duties purposes.

Q: Is there other work to be done at the WTO on electronic commerce?

A: Yes. Electronic commerce -- and in particular the dynamic growth of the Internet -- is already having a profound effect on how business is conducted. Future work will, by necessity, touch upon many traditional areas of concern to WTO members -- such as under the GATS or in the area of government procurement, as well as with regard to various elements within the important area of trade facilitation. The U.S. proposal is a small but important first step for the WTO to begin this journey. Such an action by the WTO will further enhance the certainty and stability which allows the electronic commerce environment to flourish, and will also be a WTO measure that is a positive action directly affecting the increasing

number of individual citizens throughout the world who utilize the Internet each and every day.

Q: Other international bodies are dealing with GEC. Why should the WTO be involved?

A: The WTO is involved in electronic commerce. There is no backing away from the issues and we should welcome the advances that electronic commerce can bring to the global economy.

Q: Under the U.S. proposal concerning on electronic commerce and customs duties, are Members being asked to provide a concession?

A: No. The proposal simply seeks a codification of current practices.

Q: What is the current situation? Does it vary from Member to Member?

A: The current situation is that no Member's trade regime treats electronic transmissions -- for example a phone call, a fax transmission, or a computer accessing a data base (such as via the Internet) -- as an importation for the purpose of the application of customs duties.

Q: Would this involve a change of WTO commitments?

A: No. The U.S. is unaware of any Member that has a tariff line in its WTO Schedule that provides for customs duties on electronic transmissions, such as those over the Internet. Indeed, such transmissions do not have a tariff classification in the Harmonized Commodity Description and Coding System (also known as the Harmonized Tariff Schedule).

Q: Isn't it necessary to define electronic transmissions, such as those involving Internet conveyances, as a "good" or a "service," or something else?

A: Such an undertaking is unnecessary, and may actually make a simple situation more complicated. The U.S. proposal simply seeks agreement to codify the current practice with regard to the treatment of electronic transmissions for purposes of customs duties.

Q: Has the World Customs Organization taken a view on this question of the customs treatment of electronic transmissions across borders?

A: In 1997, a working party of technical experts at the World Customs Organization considered the question of whether downloaded transmissions were to be considered “imported goods.” It was concluded that the question presented was a policy matter for national governments to decide.

Q: What is the U.S. practice with regard to customs treatment of electronic transmissions?

A: The U.S. Tariff Schedule contains a special “national” general note which states that “telecommunications transmissions” are not goods subject to the provisions of the tariff schedule. The U.S. Customs Service has issued rulings confirming such treatment for electronic transmissions of, for example, information accessed from a computer database and transmitted via satellite -- rendering such transmissions as exempt from being considered an importation for purposes of being subject to customs duties.

Q: Is there any relevance to the 1984 GATT Decision 4.1 on the customs valuation of software (which states that customs duties should be applied only to the value of the carrier media rather than the value of the “data or instructions” contained thereon)?

A: At the time of the GATT Decision 4.1, computers, electronics, and information technology was in its infancy. Yet it was agreed at that time that an importation of information on carrier media (e.g., a floppy disk) was merely an importation of the carrier media itself -- even though in terms of the interest of the importer the carrier media was incidental. For purposes of the U.S. proposal, it is notable that at the time of the 1984 GATT Decision 4.1, the Chairman of the GATT Committee on Customs Valuation observed that “software can be transmitted by wire or satellite, in which case the question of customs duties does not arise.” (VAL/W/14/Rev.2; 25 July 1984).

Q: A book or magazine can be dutiable and treated as an importation. Is it reasonable to give duty free status to electronic transmissions that may represent information contained in a book or magazine?

A: The information in a book or magazine is not dutiable; the book or magazine itself is dutiable. Moreover, it already is the practice of Members not to treat electronic transmissions as importations for customs duties, whether the information represents pages that were copied and faxed across a border, or information from a computer data base transmitted across borders via satellite or a telephone network. The U.S. proposal is intended to codify this practice within the WTO.